MOTION FILED
JAN 29 2007

(2)

No. 06-882

In The
Supreme Court of the United States

RICHARD ROLLINS, ET AL.,

Petitioners,

v.

FIRST MISSIONARY BAPTIST CHURCH OF BALLWIN, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Missouri Court Of Appeals, Eastern District

MOTION FOR LEAVE TO FILE *BRIEF AMICI CURIAE*; and BRIEF *AMICI CURIAE* OF THE MISSIONARY BAPTIST MINISTER'S UNION OF ST. LOUIS AND VICINITY and THE MISSIONARY BAPTIST STATE CONVENTION OF MISSOURI IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Petitioners Charlet Clay, Press McDowell, and Loyse Clay, administrative and spiritual leaders, deacons and officers of First Missionary Baptist Church of Ballwin, a Baptist Church located in Ballwin, Missouri and Richard Rollins, the pastor of the church beginning in 1986 have each consented to the filing of this brief, by *amici curiae*, the Missionary Baptist Ministers Union of St. Louis And Vicinity ("MBMUV") and the Missionary Baptist State Convention of Missouri ("MBSCM"). Because Respondents, Marva Gaylor, et al., plaintiffs who filed a derivative action in the trial court on behalf of the First Missionary Baptist Church of Ballwin and third-party defendants in the third-party action filed by Petitioners have withheld their consent, movants hereby move this Court, pursuant to Supreme Court Rule 37.2(b) for leave to file this *amici curiae* brief in support of Petitioners.[1]

The MBMUV is an association of over 75 Baptist pastors and churches in the metropolitan St. Louis area. It is familiar with this litigation and has followed the decisions of the Missouri courts relating to the membership dispute in the First Missionary Baptist Church for several years. The objective of the MBMUV is " . . . to furnish leadership in the promotion of the Kingdom of Our Lord Jesus Christ and a Christ-centered fellowship of Baptist ministers." The First Missionary Baptist Church of Ballwin is a member in good standing of the association but has not contributed financially to the filing of this brief. The

[1] The letters and correspondence regarding movants' requests for consent have been filed in the office of the Clerk.

MBSCM is a state-wide association of Baptist churches who are affiliate members of the National Baptist Convention, U.S.A., Inc. As such, this association also has an interest in the pending suit and its implications relating to membership and ecclesiastical matters affecting Baptist churches in Missouri and otherwise in the United States.

This case has a direct bearing on the right of churches, generally, and Baptist churches in Missouri, specifically, to determine their membership based upon church by-laws and doctrine that provide that the government of the church shall be vested in the body of members who are "in good and regular standing" which is and has always been an ecclesiastical matter within the exclusive province of the church and beyond the jurisdiction of any court under the First and Fourteenth Amendments of the United States Constitution. Because of the implications of the decision under review and the profound impact on a church's exclusive right to determine its membership, movants respectfully request the opportunity to advise this Court more fully on the urgency of granting the writ of certiorari.

Respectfully submitted,

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BRIEF OF THE MISSIONARY BAPTIST MINISTER'S UNION OF ST. LOUIS MISSOURI AND VICINITY AND THE MISSIONARY BAPTIST STATE CONVENTION OF MISSOURI

This *amici curiae* brief is submitted on behalf of the Missionary Baptist Minister's Union of St. Louis, Missouri And Vicinity and the Missionary Baptist State Convention of Missouri. Petitioners, Charlet Clay, et al., have consented to the filing of this brief.[1] Respondents, Marvin Gaylor, et al., have withheld their consent. A motion for leave to file this amici brief under Supreme Court Rule 37.2(b) is included with this brief. The correspondence regarding movants' request for consent have been filed in the office of the Clerk.

I. INTEREST OF *AMICI CURIAE*

The Baptist movement developed as one wing of English Congregationalism. Opposed to infant baptism, the Baptists believe the baptism should be restricted to believers who are old enough to make their own declaration of faith and in immersion (dipping under water), rather than by pouring or sprinkling. All of the Congregationalists feared the authority of bishops and synods (counsels) and **strongly declared the rights of local congregations to govern themselves**. About half the

[1] This brief was authored by outside counsel for movants. Counsel do not represent Petitioners in this Court and did not represent Petitioners in the Court of Appeals. No person or entity, other than movants' members, made a monetary contribution to this brief's preparation or submission. See Supreme Court Rule 37.6. Although Petitioner Rollins is the Pastor of the First Missionary Baptist Church of Ballwin, neither he nor the other Petitioners made any financial contribution to the brief's preparation or submission.

Baptists in the United States are affiliated with the Southern Baptist Convention. The two black national Baptist groups – the National Baptist Convention of America and the National Baptist Convention U.S.A., Inc. form another large segment of Baptists in the United States. The National Baptist Convention, U.S.A., Inc., is one of the largest religious organizations among American blacks with over 30,000 churches and about 7,500,000 members. The Missionary Baptist Minister's Union of St. Louis, Missouri And Vicinity is an association of over 75 Baptist pastors and churches in the St. Louis metropolitan area which includes the First Missionary Baptist Church of Ballwin, Missouri. The Missionary Baptist State Convention of Missouri is an association of over 250 Baptist churches in the State of Missouri who, like the Minister's Union, is affiliated with the National Baptist Convention U.S.A., Inc. The decision of the court of appeals in approving the use of a 2002 telephone directory to determine membership in the First Missionary Baptist Church of Ballwin departs from the accepted constitutional principle that the civil law and judicial authority may not infringe on the ecclesiastical authority of a church to determine its membership under the First and Fourteenth Amendments of the U.S. Constitution. Movants submit this brief to illustrate the impact of this decision on the ecclesiastical authority of the Baptist Church and other churches to govern their churches within accepted ecclesiastical doctrine and tradition, and to argue that certiorari review is needed to correct the Missouri court's erroneous interpretation of the First Amendment Establishment Clause and to resolve the uncertainties and confusion occasion by the decision.

II. SUMMARY OF ARGUMENT

In refusing to review the decision of the court of appeals, *First Missionary Baptist Church of Ballwin v. Richard Rollins, et al.*, 199 S.W.3d 823 (Mo.App. 2006) the Missouri Supreme Court has let stand the decision of the court affirming the findings of a Master appointed by the circuit court who relied upon a 2002 church telephone directory to determine membership in the First Missionary Baptist Church of Ballwin for the purpose of ordering an election in 2005 of new board members. In doing so, the courts interfered with the governance of the church in what most certainly is an ecclesiastical matter. This departure from accepted constitutional principles is justified on the grounds that the church filed articles of incorporation as a not-for-profit corporation and, as a result, somehow lost its status as a religious institution to resolve disputes among its members over the election of trustees to guide the church. The resolution of these issues was not the proper subject of the equitable jurisdiction of the circuit courts.

In *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) this Court, in the context of a hierarchical church dispute, held that the power of religious leaders to decide, free from state interference, matters of church governance as well as those of faith and doctrine must be accepted by legal tribunals. Movants respectfully suggest that a correct application of the principles asserted in the *Serbian* case necessarily require a reversal of the lower court decision or, alternatively, this Court should clarify its ruling in the context of this case which involves a local Congregational church where membership determinations have been

made by the court. Movants also suggest that the courts should not under any circumstances make membership determinations. In this case, the appellate court decided which individuals qualified as members of the First Missionary Baptist Church of Ballwin, an ecclesiastical matter, by ignoring the religious standards set forth in the by-laws and doctrine of the church. It has long been held that the determination whether individuals qualify as members of a church is ecclesiastical in nature and, therefore, beyond the reach of any court under the First and Fourteenth Amendments of the United States Constitution.

Unless otherwise clarified by this Court, the decision of the Missouri court will create ongoing confusion regarding the control and management of churches, generally, and the First Missionary Baptist Church of Ballwin, specifically, and otherwise conflicts with the applicable decisions of this Court.

III. ARGUMENT

A. The Decision Below Conflicts With Principles Of Separation Of Church And State And The Decisions Of This Court

It is an accepted principle of constitutional law that civil courts may not interfere in religious societies with reference to ecclesiastical matters; and, as long as no civil or property rights are involved, a church member has no right to invoke the supervisory power of a civil court in a matter of ecclesiastical jurisdiction. See *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 99 S.Ct. 2372, 49 L.Ed.2d 151 (1976); and *Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church,* 39 Cal.2d

121, 245 P.2d 481 (Ca. 1952), cert. denied, 345 U.S. 938, 97 L.Ed. 1365, 73 S.Ct. 828 (1953), explaining in part that courts of the land are not concerned with mere polemical discussions and cannot coerce the performance of obligations of a spiritual character, or adjudicate whether a person is a catholic in good standing or settle mere questions of faith or doctrine or decide who the rightful leader of the church ought to be or enjoin a clergyman from striking the complainant's name from his register of communicants. See also, *Trett v. Lambeth*, 195 S.W.2d 524 (Mo.App. 1946). The underlying case represents a departure from these accepted principles and directly involves the Missouri courts in a determination of the membership of the First Missionary Baptist Church of Ballwin, a subject beyond the jurisdiction of the court. As stated by the appellate court, the underlying dispute involves the election of a board of directors of a not-for-profit corporation. What the appellate court ignores, however, is that the dispute involves an election of a **religious** not-for-profit corporation which enjoys the full protection of the First Amendment.

Movants suggest that the decisions of the Missouri courts conflict with the principles set forth in this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 629, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). The appellate court's statement that it was merely applying neutral principles of law ignores the fact that the court, not the church and its members, determined who were church members eligible to vote and only serves to confuse the right under the First Amendment to be free from interference by the civil court. *First Missionary Baptist Church, et al.*, 199 S.W.3d 823, 829 (Mo.App. 2006)

Movants submit that the distinctions made in this decision are artificial at best in that the court of appeals affirms the finding of a Master who undertook to determine who were **members in good and regular standing** in the church based upon an outdated 2002 telephone directory for a court ordered election which took place in 2005 which had the effect of divesting the current leadership of the church and removing the pastor from authority.

Movants respectfully suggest that a proper application of this court's decision in *Serbian Eastern Orthodox Diocese* mandates the reversal of the decision. It is important to note that the Missouri court seems to adopt the reasoning of Justices Rehnquist and Stevens in their dissenting opinions in *Serbian*. 426 U.S. 696 at 725. In light of the probable confusion created by this decision, movants believe this Court should grant certiorari and clarify the efficacy of its decision in the context of the Baptist church tradition which does not have a hierarchical structure. Further, the movants assert that other state courts have decided such matters regarding Congregational churches consistent with this Court's decisions in direct contradiction to the decision by the Missouri court.

B. The Decision Below Presents An Important First Amendment Issue That Can Effect The Rights Of Many Independent African American Baptist Churches To Freely Practice Their Religious Beliefs

The First Missionary Baptist Church of Ballwin ("FBCB") has traditionally affiliated itself with the Missionary Baptist State Convention of Missouri and the National Baptist Convention, U.S.A., Inc. which is an association of independent congregational predominantly

African American churches. Each church is an independent organization in that each church within the association can operate autonomously from the national association but have come together to form an association of independent churches with like religious principles, doctrine and rules of governance. However, independent congregational does not mean there are no rules of governance and religious principles that are adhered to. Many of the independent churches have a small membership and others have very large memberships.

Although many Baptist churches are independent congregational churches, this does not mean that the courts or the states have more latitude to entangle themselves in the internal affairs of these churches any more than, for example, to the Roman Catholic Church, and such congregational churches are due the same regard and protection under the First Amendment as any large affluent hierarchical religious denomination. This Court should review the underlying case and consider the proper application of the First Amendment to small independent congregational churches.

C. The Decision Below Entangles Missouri State Courts In The Religious Affairs Of A Church And Effectively Changes The Historical Practices Of A Nearly 200-Year Old African American Church Based On The Court's Secular Reasoning

The court of appeals places great emphasis on the fact that the FBCB applied for articles as a not-for-profit corporation under the applicable state statutes. But, even under the state law, membership is defined by the by-laws and doctrine of the church.

In this case, as stated by the Petitioners, the by-laws of the church provided in part:

* * *

> *Government*: The government of this church shall be vested in the body of members who are in **good and regular standing.**
>
> *Membership*: Membership of this church shall consist of such persons who have been **duly and regularly received into its fellowship**. All persons are eligible to membership in this church who are willing to accept in spirit the following principles: Believe in the Fatherhood of God and the Brotherhood of Man. Believe that Christ is the way the truth and the life. Belief in the clean heart, the unworldly mind, and the service of love which Jesus taught and exemplified and acceptance of His Spirit and His teaching. (Article 2 of the By-Laws of the First Missionary Baptist Church of Ballwin, Missouri – Exhibit 2 of Petitioners' Appendix.)

* * *

(Emphasis ours.)

It necessarily follows that the determination of **membership in good and regular standing** in the First Missionary Baptist Church of Ballwin is an ecclesiastical matter. It is understandable why the Master appointed by the circuit court seized upon the 2002 telephone directory to determine church membership because this avoided the ecclesiastical question, but such reliance was misplaced. By relying on such an outdated document, the court totally ignored the ecclesiastical standards set forth in the church doctrine and by-laws, and, for this reason alone, this Court should grant the writ and review this decision.

Movants submit that the appellate decision, by deciding who were members of the church, also effectually decided who would control the church and its assets. The appellate court asserts that " . . . " we are not faced with a decision regarding the internal removal of a religious leader within a hierarchical church as the Court was in *Serbian*" (199 S.W.2d 823 at 829). However, the court effectively did exactly what it asserts it did not do by deciding who was a **member** for the purpose of electing a board, who then had the authority to control all assets and to appoint new officers including the Pastor and other church leaders. These are matters of genuine concern to movants and their affiliated pastors and churches and they respectfully urge this Court to grant the petition for these reasons.

D. The Decision Below Directly Conflicts With Missouri Decisions As Well As Other State Court Decisions

Past decisions of Missouri courts demonstrate the difficulty in deciphering what is within the purview of civil courts under the current common law scheme. *Struemph v. McAuliffe*, 661 S.W.2d 559, 562 (Mo.App. 1983) ("The constitutional boundary restraining the authority of the civil courts is difficult of demarcation"). Generally Missouri courts have declined to exert subject matter jurisdiction over decisions left solely to ecclesiastical authority, including membership. *Rolfe v. Parker*, 968 S.W.2d 178, 184 (Mo.App. 1998) ("The determination of who are qualified members of the church is an ecclesiastical matter"); *Fast v. Smyth*, 527 S.W.2d 673, 676 (Mo.App. 1975) ("The determination of who are qualified members of a church is an ecclesiastical matter" that falls within "the exclusive

jurisdiction of the ecclesiastical tribunals"); *Murr v. Maxwell*, 232 S.W.2d 219, 234 (Mo.App. 1950) ("Under the law, questions concerning expulsion of members are purely ecclesiastical questions"). The lower court's holding falls into an exception – those Missouri cases where the courts applied a "neutral principles of law" analysis and decided that the First Amendment does not strip civil courts of subject matter jurisdiction to decide church disputes where the issue is one which deals purely with a religiously-neutral civil law. *State ex rel. Gaydos v. Blaeuer,* 81 S.W.3d 186, 192 (Mo.App. 2002), *Weaver v. African Methodist Episcopal Church,* 54 S.W.3d 575, 581 (Mo.App. 2001). Movants here suggest that the present case does not invoke the exception and therefore is outside the jurisdiction of the civil courts.

In *Rolfe v. Parker*, 968 S.W.2d 178 (Mo.App. 1998), the appellate court reviewed the lower court's dismissal of a suit seeking a preliminary injunction, declaratory relief and an accounting brought by one church faction against a separate faction within the church. One of the two competing groups argued that the determination of whether the apostles or an administrative committee constituted the authority of the church was an ecclesiastical question over which the circuit court did not have subject matter jurisdiction.

In resolving this question, and relying on *Serbian Eastern Orthodox Diocese*, the court in *Rolfe* held that "the question of who was authorized to act in the priesthood position of apostle was not within the civil court's subject matter jurisdiction as such determination 'concerns doctrine, creed or form of worship of the church.' (citation omitted) 'The determination of who are qualified members

of the church is an ecclesiastical matter.'" 968 S.W.2d at 184. (Emphasis added.)

Courts in other states have likewise interpreted *Serbian Eastern Orthodox Diocese* as holding that membership determinations are ecclesiastical matters that a civil court has no authority to resolve. In *Lott v. Eastern Shore Christian Center*, 908 So.2d 922, 925 (Ala. 2005), cert. denied, 126 S.Ct. 416, 163 L.Ed.2d 317 (2005), the Alabama Supreme Court reviewed the trial court's refusal to enter a TRO and grant other relief following the decision by church leadership to remove certain individuals as members of the church. In denying the TRO, the trial court noted, "this judge isn't going to get involved in the government of a church, because I don't think I have any jurisdiction over who is a member, or not a member . . . " *Id.*

In reliance on *Serbian Eastern Orthodox Diocese* and various other state and federal court decisions applying its principles, the Alabama Supreme Court affirmed the trial court's refusal to exercise jurisdiction by holding that: "In seeking to preempt church discipline . . . , the motion for a TRO essentially invited the court to become embroiled in the merits of a 'fundamental ecclesiastical concern' with which courts must have nothing to do, namely, 'determining who is and who is not [a Church] member.' (citation omitted)." *Id.* at 930-931.

In *Lott*, the Alabama Supreme Court relied heavily on *Burgess v. Rock Creek Baptist Church*, 724 F.Supp. 30 (D.D.C. 1990), another case that applied this Court's holding in *Serbian Eastern Orthodox Diocese*. In *Burgess*, the plaintiff sought to challenge the termination of his church membership after forty years. *Id.* at 31. The

district court entered summary judgment in favor of the church on the plaintiff's declaratory judgment suit which sought a determination that she was a "Church member in good standing." *Id.*

In justifying its determination that the First Amendment precluded the court from granting declaratory relief, the court reasoned that "if the defendants' decision to terminate the plaintiff's membership was a matter of ecclesiastical cognizance, the First Amendment and Supreme Court case law preclude this Court from acting upon the plaintiff's allegation that defendants 'arbitrarily and capriciously' deprived her of her RCB Church membership." *Id.* at 33.

IV. CONCLUSION

The decision below conflicts with the fundamental rights of the Congregational churches under the First Amendment. As argued by the Petitioners, and supported by the foregoing additional reasons, the petition for writ of certiorari should be granted.

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